



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

LVO/142279

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2012, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee County Department of Human Services in regard to Other, a hearing was held on September 25, 2012, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly issued a tax levy against the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Daryl Caper

Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. A hearing was scheduled regarding a child care overpayment on January 18, 2012. The Petitioner failed to appear. A decision was issued January 19, 2012 dismissing the Petitioner's petition as abandoned. See DHA Case No. CCO/135896.

3. On February 2, 2012, March 2, 2012 and April 3, 2012, dunning notices were issued to the Petitioner regarding the cc overpayment totaling \$5,230.54. The February 2 and March 2 notices were sent to the Petitioner at [REDACTED]. The April 3 notice was sent to the Petitioner at [REDACTED].
4. On May 11, 2012, a tax intercept notice was issued to the Petitioner at [REDACTED]. The notice informed the Petitioner that she has an unpaid debt for excess public assistance in the amount of \$5,230.54 that may be intercepted from tax refunds or credits. It informed the Petitioner of her right to an administrative hearing under s. 49.85(4) and 227.44 of the Wis. Stats. It further noted that she did not have a right to a hearing on any issue for which she had a prior right to a hearing. Any request for hearing was required to be filed within 30 days of the date of the notice.
5. On June 27, 2012, a Public Assistance Collection Unit Levy was issued. The levy notice notified the Petitioner of the right to request a fair hearing regarding the issuance of the levy within 21 days of the date of the notice. The levy notice also note the amount due as \$5,260.34.
6. On July 11, 2012, the Division of Hearings and Appeals received, via fax, a request for a rehearing in Case No. CCO/135986. Because the Petitioner's request for rehearing was received more than 30 days after the January 19, 2012 decision, the request was denied. A Rehearing Request Order denying the request was issued by the Division of Hearings and Appeals on July 13, 2012.
7. On July 11, 2012, the Division of Hearings and Appeals opened the instant appeal regarding the issuance of the tax levy.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to AFDC) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 101.23(4). One method of collection that the department may utilize is the use of a levy under Wis. Stat., §49.195 (3N). Wis. Admin. Code, §DCF 101.23(10)(b) provides as follows: "1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt." Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. §DCF 101.23(10)(e). The levy is not stayed pending an appeal where property is secured through the levy. §DCF 101.23(10)(c)(3).

The reason that the issues are limited is that a person must appeal an overpayment within certain time limits after receiving the notice of the overpayment. For child care the person must appeal within 45 days of the notice, and the January 19, 2012 overpayment notice informed Petitioner of the limit. Once the time limit for appealing is past, the person no longer can appeal whether she owes the amount.

In this case, the Petitioner argued at the hearing that she did not appear at the January 18, 2012 hearing due to her home being broken into on January 14, 2012. She testified that she lost the letter regarding the hearing and that she moved out of her apartment right after it was broken into. I note that the Petitioner has already submitted a rehearing request to the Division of Hearings and Appeals and her request was denied. She cannot make another request for rehearing on the overpayment through this tax levy proceeding. Petitioner also indicated that she received the tax intercept notice in May, 2012. She did not file a timely appeal of that action.

With regard to the levy, Petitioner did not argue that there was mistaken identity or that she paid the debt. I thus must find that the levy was imposed correctly.

CONCLUSIONS OF LAW

The agency properly issued a tax levy against the Petitioner.

THEREFORE, it is **ORDERED**

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

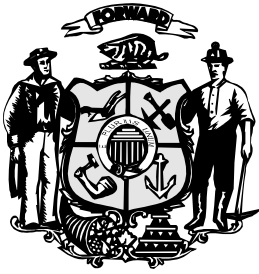
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of November, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Public Assistance Collection Unit, DWSPACU@wisconsin.gov - DWSPACU@wisconsin.gov
DHSMILESFAIRHEARINGS@dhs.wisconsin.gov, DHSMILESFAIRHEARINGS@dhs.wisconsin.gov -
Milwaukee County



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 1, 2012.

Milwaukee County Department of Human Services
Public Assistance Collection Unit